

Internal Revenue Service

Number: **200744002**
Release Date: 11/2/2007
Index Number: 1362.01-03

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-104321-07
Date:
August 03, 2007

LEGEND

Company =

Shareholder =

State =

Date 1 =

Dear :

This letter responds to your letter dated January 16, 2007, and subsequent correspondence, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

FACTS

Company was incorporated under State law on Date 1. Shareholder, Company's sole shareholder, intended for Company to be an S corporation effective Date 1. However, through no fault of Company or Shareholder, Form 2553, Election by a Small Business Corporation, was not timely filed. Accordingly, Company requests a ruling that it will be treated as an S corporation effective Date 1.

LAW AND ANALYSIS

Section 1362(a) provides, in general, that a small business corporation may elect to be an S corporation.

Section 1362(b)(1) provides that an election under § 1362(a) may be made by a small business corporation for any taxable year (A) at any time during the preceding taxable year, or (B) at any time during the taxable year and on or before the 15th day of the third month of the taxable year.

Section 1362(b)(5) provides that if (A) an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362(b) for making the election for that taxable year or no such election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make the election, the Secretary may treat such an election as timely made for that taxable year.

CONCLUSION

Based solely on the facts and representations submitted, we conclude that Company has established reasonable cause for failing to make a timely election to be an S corporation and is eligible for relief under § 1362(b)(5). Accordingly, provided that Company makes an election to be an S corporation by filing a completed Form 2553, containing an effective date of Date 1, along with a copy of this letter, with the appropriate service center within 60 days following the date of this letter, then such election will be treated as timely made for Date 1.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied regarding Company's eligibility to be an S corporation.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

/s/

Tara P. Volungis
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes